THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.23206 of 2005

Date:31.10. 2005

G.Jayachandra Naidu.

--------PETITIONER

Government of Andhra Pradesh, Roads and Buildings

Department and others.

---------RESPONDENTS

ORDER:

The petitioner is a Class III Civil Contractor. The 3rd respondent issued a tender notice in the year 2004, inviting tenders for laying a road of 3 kilo metres between Kakarlavaripalli and Chukkavaripalli Villages of Chittoor District. The petitioner emerged as the successful tenderer. Accordingly, an agreement was executed on 26.03.2004. The work was required to be completed within a period of two months from the date of agreement.

The petitioner states that on account of continued ill-health, he could not conclude the work, though he started and made substantial investments. It is also represented that extensions were granted by the 3rd respondent up to 31.03.2005. The 3rd respondent issued a letter, dated 20.04.2005, terminating the contract awarded to the petitioner, forfeiting the deposits made by him, and debarring from the tender work in the division for a period of five years. The petitioner challenges the same.

Ms. P.Padmavathi, the learned counsel for the petitioner submits that the 3rd

respondent himself granted extensions for completion of the work, on being satisfied about the reasons and other factors, and that cancellation of the work through the impugned letter is without any basis. She contends that the petitioner had made substantial investment in the work and that the same has been certified by the Assistant Executive Engineer as well as the 3rd respondent, as is evident from the letter, dated 25.08.2005, issued by the 3rd respondent. She also made reference to the recommendations made by the 3rd respondent to the 2nd respondent for revoking the order of termination. She contends that the direction to debar the petitioner from participating in the works in the division is contrary to the principles of natural justice.

The learned Government Pleader for Roads and Buildings, on the other hand, submits that though the work was required to be completed within a period of two months, the petitioner did not commence it, even after lapse of one year, and that the respondents were left with no alternative, except cancelling the contract. He contends that the very purpose of sanctioning the road was defeated and that the local people were subjected to hardship, on account of non-execution of the work.

The petitioner emerged as the successful tenderer and was awarded the contract in question. The agreement, dated 26.03.2004, mandates that the work shall be completed within a period of two months from the date of agreement. The 3rd respondent is vested with the power to extend the time for execution, on being satisfied about the causes. Such extensions were, in fact, granted in favour of the petitioner, till 31.03.2005. However, despite such extensions, the petitioner did not commence the work and failed to complete the same. In that view of the matter, no exception can be taken to the action of the 3rd respondent in issuing the letter, terminating the contract.

Apart from determining the contract, the 3rd respondent proceeded to forfeit the earnest money deposit and blacklist the petitioner from participating in the works, for a period of five years. It is contended that the petitioner had executed certain works and gathered material etc. A perusal of the

correspondence that ensued between respondents 2 and 3 gives an indication to certain extent. However, no definite finding can be recorded at present. If the petitioner had executed any works, or gathered any material on the site, which can be used for the work, there is no reason why the same shall not be taken into account, while determining his liability or entitlement.

So far as the direction to debar the petitioner from participating in the future works is concerned, it cannot be sustained for the simple reason that the petitioner was not put on notice before he was blacklisted. It is settled principle of law that the blacklisting can be resorted to, only after issuing notice to the affected party.

For the foregoing reasons, the writ petition is disposed of-

a. upholding the decision of the 3rd respondent in cancelling the agreement with the petitioner;

b. directing that the actual work and the value of the material, if permitted, to be used in the work, shall be taken into account, while determining the liability of the petitioner vis-à-vis the Department;

c. setting aside the direction, debarring the petitioner from participating in the works in the division for a period of five years; leaving it open to the respondents to take action against the petitioner after issuing a show cause notice; and

d. directing that any further steps for the work in question shall take place only with the specific approval of the Superintending Engineer

There shall be no order as to costs.

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31.10.2005

Note: Issue C.C. in three days.

(B/o)

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